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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/506,294	08/31/2004	Johannes Lenkl	53376/DBP/E43	3215
23363 7590 01/09/2008 CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068			EXAMINER OSELE, MARK A	
			ART UNIT 1791	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/506,294

Applicant(s)

LENKL, JOHANNES

Examiner

Mark A. Osele

Art Unit

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 8 and 9 each recite the limitation "the pad receiving means" in line 2.

There is insufficient antecedent basis for this limitation in the claims. It is presumed that claim 9 should depend from claim 8, not claim 6.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6, 13, 16-17, 19-20, 22-23, and 27-31 are rejected under 35 U.S.C. 102(b) as being anticipated by French (US Patent No. 3,888,725).

Regarding claim 1, French discloses an applicator head for a device which is in communication with an air suction source and also includes an applicator surface, 67, with at least two perforatable, weak locations being recesses, 101, having a bottom, 115, which can be perforated, 117, by a suitable tool to provide holes in a desired configuration. (Col. 5, lines 32-36, 54-67, Col. 6, lines 18-25).

As to claims 2, 3, and 5, Figures 3 and 5 show how the weak locations are regularly arranged over the entire applicator surface in rows and columns.

As to claim 4, Figure 3 shows grooves extending to the applicator surface.

As to claims 6 and 13, French further shows an applicator pad, 31, coupled to the applicator surface. (See Figure 4) Also included is a mounting frame releasably connected to the applicator pad (See Figure 2).

As to claim 16, it appears that the weak locations could be perforated by hand, such as using a hand drill, which would have a handle.

As to claim 17, the carrier plate is releasably connected to the air suction force through tubes, 103.

As to claims 19-20 and 28, the formation in Figures 3 and 5 show a pattern of closely spaced dots that amounts to a raster grid with rows and columns.

As to claim 22, the applicator plate includes an applicator surface in French.

As to claim 23, the carrier plate and applicator plate in Figure 4 includes a space in between.

As to claim 29, the applicator plate of French is in combination with an applicator head.

As to claims 30-31, the method of making the applicator plate of French comprises: providing an applicator plate having spaced perforatable weak areas; perforating only selected ones of the weak areas of the plate; and assembling the applicator plate onto a label applicator head.

5. Claims 1-5, 13, 15, 18, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Becker (US Patent No. 6,182,957 B1).

Regarding claim 1, Becker discloses an apparatus for holding a flexible product which is in communication with an air suction source and also includes an applicator surface with at least two perforatable, weak locations being recesses having a bottom which can be perforated by a tool which is made of a harder material than the plate to provide holes through the plate in a desired configuration.

As to claims 2 and 3, Figure 3 shows how the weak locations are regularly arranged over the entire applicator surface.

As to claims 4 and 5, a second plate (16) is fastened to the flat plate (14) and provides for columns and grooves which are provided between at least two columns of the weak locations as shown in Figure 1. The grooves extend in parallel and at equidistant spacing to each other.

As to claim 13, Becker includes an applicator plate (16) and a carrier plate (14).

As to claim 15, the applicator plate includes grooves which are considered weakened locations which are aligned with the weakened locations (22) on the carrier plate (14).

As to claims 18 and 26, the material used in Becker is plastic material, and plastic materials are known to be deformable.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4, 6, 10, 13, 15-17, 19, 20, 22-23 and 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Hofe (US Patent No. 2,492,908). In view of Becker (US Patent No. 6,182,957).

Regarding claim 1, Von Hofe discloses an applicator head for a device which is in communication with an air suction source and also includes at least two perforatable, weak locations on the surface which can be selectively perforated to provide through holes through the plate in a desired configuration. The applicator in Von Hofe includes a shim (45). (Col. 5, line 51 through Col. 6, line 27.) Von Hofe fails to show the weak locations being recesses.

Becker shows weak locations being recesses having a bottom that can be perforated by a suitable tool. It would have been obvious to one of ordinary skill in the art at the time the invention was made to place the weak locations of Von Hofe in recesses, such as those shown by Becker, because vacuum surfaces commonly include recesses so an adhered article can remain supported on raised ridges while vacuum is applied along the recesses.

As to claims 2 and 3, Figures 3 and 5 of Von Hofe show how the weak locations are regularly arranged over the entire applicator surface.

As to claim 4, Figure 6 of Von Hofe shows grooves extending to the applicator surface.

As to claims 6, 10, 13, and 15, Von Hofe includes an embodiment where an applicator pad (39) is coupled to the applicator surface of the shim (41). (See Figure 2.) Also included is a mounting frame (36) releasably connected to the applicator pad (39). The surface of the mounting frame includes perforated or weak locations (42) which correspond to the ones on the shim (41).

As to claim 16, it appears that the weak locations could be perforated by hand, such as using a hand drill, which would have a handle.

As to claim 17, the carrier plate of Von Hofe is releasably connected to the air suction force.

As to claims 19-20 and 28, the formation in Figures 3 and 5 of Von Hofe show a pattern of closely spaced dots that amounts to a raster grid with rows and columns.

As to claim 22, the applicator plate of Von Hofe includes an applicator surface in Van Hofe.

As to claim 23, the embodiment of Von Hofe with the carrier plate and applicator plate in Figure 2 includes a space in between.

As to claim 29, the applicator plate of Von Hofe is in combination with an applicator head.

As to claims 30-31, the method of making the applicator plate of Von Hofe comprises: providing an applicator plate having spaced perforatable weak areas;

perforating only selected ones of the weak areas of the plate; and assembling the applicator plate onto a label applicator head.

8. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Hofe in view of Becker as applied to claims 1, 6, and 10 above, and further in view of Tiefel (US Patent No. 5,885,406).

While Von Hofe shows applicator pad with a mounting frame, there is no teaching in Von Hofe with respect to a locking device which includes a spring-loaded ball. It would have been obvious to one having ordinary skill in the art at the time the invention was made that such a locking device could be used in the device of the references as combined, because, as shown in Tiefel, such a locking device is known in the art and within the purview of one of ordinary skill to use as needed.

9. Claims 14 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Hofe in view of Becker as applied to claims 1 and 13 above, and further in view of Wood (US Patent No. 3,377,096) or Wilson et al. (US Patent No. 5,024,574).

Von Hofe discloses releasably attaching the applicator plate and the carrier plate. Alternatively the plates could be non-releasably fastened together as shown in both Wood and Wilson. It would have been obvious to one having ordinary skill in the art at the time the invention was made to non-releasably fasten plates together by means of glue, because Wood and Wilson show that it is well known to glue surfaces together which multiple plates are used in combination on a vacuum chuck. Using glue to



adhere the plates together is a functionally equivalent alternative expedient of using fasteners, both being within the purview of the artisan.

***Allowable Subject Matter***

10. Claims 8 and 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. Claim 25 is allowed.

12. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art suggests the pad receiving means to be C-shaped guide rails.

***Response to Arguments***

13. Applicant's arguments filed November 30, 2007 have been fully considered but they are not persuasive. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Osele whose telephone number is 571-272-1235. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Philip Tucker can be reached on 571-272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**MARK A. OSELE  
PRIMARY EXAMINER**

January 7, 2008